



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

Beverley K. Swaim-Staley, Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

December 3, 2009

Re: Project No. MO593A23
MD 187 @ Oakmont Avenue/W. Cedar Lane
Bethesda BRAC Intersection Improvements
Montgomery County

Mr. Nelson J. Castellanos
Division Administrator- Delmar Division
Federal Highway Administration
City Crescent Building
10 South Howard Street, Suite 2450
Baltimore, MD 21201

Attention: Mr. Jitesh Parikh

Dear Mr. Castellanos:

In accordance with CEQ Regulations, 23 CFR 771 and 23 CFR 774, the Maryland State Highway Administration (SHA) recommends that the proposed intersection improvements at the intersection of MD 187 (Old Georgetown Road) and Oakmont Avenue/West Cedar Lane in Montgomery County be classified as a Categorical Exclusion (CE) and requests your concurrence that the requirements of Section 4(f) do not apply to the temporary use of property within a historic site. We also request that the Federal Highway Administration (FHWA) make a *de minimis* impact finding with respect to minor permanent impacts to a historic site to comply with the requirements of Section 4(f).

Existing Conditions

The project is located at the intersection of MD 187 and Oakmont Avenue/West Cedar Lane in Bethesda, Maryland (**Attachment 1**). MD 187, a north-south roadway, is classified as an Urban Principal Arterial with a posted speed limit of 40 miles per hour (mph). West Cedar Lane/Oakmont Avenue, an east-west roadway, is classified as an Urban Minor Arterial with a posted speed limit of 25 mph. The average daily traffic (ADT) on MD 187 was 49,950 vehicles per day (VPD) in 2008 and is expected to increase to 53,000 VPD by 2011. Trucks account for five percent of the current and future ADT on MD 187. The ADT on West Cedar Lane/Oakmont Avenue was 12,275 VPD in 2008 and is expected to increase to 14,250 VPD by 2011. Trucks account for four percent of the current and future ADT on West Cedar Lane/Oakmont Avenue.

My telephone number/toll-free number is _____

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Mr. Nelson J. Castellanos
MD 187 @ Oakmont Avenue/W. Cedar Lane
Page Two

Land use within the project area consists of a mix of residential, commercial and government/institutional. Besides a small pocket of the southeastern quadrant that houses Station 20 of the Bethesda Fire Department, the southeastern quadrant of the intersection is occupied entirely by National Institute of Health (NIH) property. Commercial properties comprise the corners of the northeast, northwest and southwest quadrants of the intersection. Beyond the immediate intersections, residential properties front both sides of Oakmont Avenue and southbound MD 187.

SHA is evaluating these intersection improvements in order to prepare for the influx of approximately 10,000 jobs that are expected to be added to the National Naval Medical Center (NNMC) and NIH by the year 2020 as a product of the Base Realignment and Closure (BRAC) process.

Proposed Action

The purpose of this project is to reduce congestion and improve traffic flow and safety at the intersection. Work consists of roadway widening, pavement reconstruction and resurfacing, curb and gutter construction, stormwater management, drainage improvements, signing, lighting, marking, signalization, upgrades to pedestrian and bicycle facilities and other associated improvements.

Additional minor right-of-way (ROW) and easements will be required from a total of 11 residential, commercial and government/institutional properties in order to complete the proposed improvements. With the exception of a perpetual easement required from NIH for stormwater management, all ROW and easements consist of strip takes along the frontage of properties. See Table 1 for total ROW and easement requirements.

TABLE 1: ROW and Easement Requirements

Fee-Simple ROW	Perpetual Easements	Temporary Construction Easements
0.064 acre	0.697 acre	0.693 acre

Environmental

On April 2, 2009, an Informal Public Workshop meeting was held at the Bethesda-Chevy Chase High School (4301 East-West Highway) to discuss the purpose and need of the project, explain the proposed schedule, and receive public comments (**Attachment 2**).

Having addressed the public concerns raised at the meeting, SHA has upgraded the Bethesda Trolley Trail from a five-foot sidewalk to a ten-foot shared use path along the east side of MD 187; revised the exclusive through lane on Westbound Cedar Lane to a shared/ through left turn lane to eliminate widening on Oakmont Avenue; provided a median cut through for pedestrians at the crosswalks; removed stormwater management facilities in heavily forested areas, and realigned MD 187 to maintain the Bethesda Fire Department's apron length.

Mr. Nelson J. Castellanos
MD 187 @ Oakmont Avenue/W. Cedar Lane
Page Three

One property within the Area of Potential Effects, the Walter P. Johnson House, is eligible for the National Register of Historic Places (NRHP). Minor impacts consisting of 0.004 acre (164 square feet) fee-simple ROW and 0.014 acre (618 square feet) of temporary construction easements are anticipated at the Walter P. Johnson House. On August 12, 2009, the Maryland Historical Trust (MHT) concurred that the proposed improvements would have no adverse effect on historic properties (**Attachment 3**).

In accordance with 23 CFR 774, we request that FHWA make a *de minimis* impact finding regarding the minor impacts to the Walter P. Johnson House as a result of minor roadway widening and slope grading. Permanent impacts totaling 0.004 acre (164 square feet) of fee-simple ROW will not alter the characteristics that make the property eligible for the NRHP. This finding would satisfy the requirements of Section 4(f) and is supported by the Maryland State Historic Preservation Officer's concurrence that the project would have no adverse effect on historic properties. MHT has also acknowledged and agreed with SHA's intent to seek a *de minimis* impact finding (**Attachment 3**).

This project meets the requirements for a *de minimis* impact finding based on the following criteria:

- The SHPO, as part of the Section 106 process, determined that the project would have no adverse effect on historic properties;
- The SHPO has been informed of FHWA's intent to make a *de minimis* impact finding based on their written concurrence in the Section 106 determination;
- The views of consulting parties participating in the Section 106 consultation have been considered.

Additionally, temporary construction easements totaling 0.014 acre (618 square feet) will be required from the Walter P. Johnson House during construction. In accordance with 23 CFR 774.13(d) and given that the improvements would occur by temporary occupancy only, the requirements of Section 4(f) would not apply in this instance based on the following criteria:

- The duration of the impact will be temporary, i.e., less than the time needed for construction of the project;
- There will be no change in ownership of the land;
- The scope of the work will be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) resource are minimal;
- There are no anticipated permanent adverse physical impacts; and
- The land being used will be fully restored, i.e., the resource will be returned to a condition which is at least as good as that which existed prior to the project.

Mr. Nelson J. Castellanos
MD 187 @ Oakmont Avenue/W. Cedar Lane
Page Four

See **Attachment 3** for a copy of MHT's concurrence with the temporary use criteria and that the temporary uses at the Walter P. Johnson House should not be subject to the requirements of Section 4(f).

Coordination with SHA's Environmental Programs Division confirmed that no wetlands, waterways or 100-year floodplains will be impacted by the proposed improvements. The proposed work will not impact fisheries resources, especially if sediment and erosion control methods, and Best Management Practices typically used for the protection of stream resources are utilized. The project is not located within the Chesapeake and Atlantic Coastal Bays Critical Area. The project would not impact any proposed or listed federal or state rare, threatened or endangered plant or animal species (**Attachments 4 & 5**).

Erosion and sediment (E&S) control plans are designed in accordance with MDE's current regulations. Areas disturbed for roadway widening, sidewalk, curb and gutter installation as well as cut slopes will be stabilized daily by using graded aggregate and/or topsoil, seed and mulch. Additional measures may include but will not be limited to silt fence, check dams, stabilized construction entrances, and other Best Management Practices. E&S plans will also be approved by the MDE.

Air and noise analyses are not warranted since the proposed project does not result in any significant capacity improvements. This project is identified as MO593A23 in the current STIP and 09TIP-M5-1 in the current TIP. This project is exempt from the requirement that a conformity determination be made (U.S. EPA Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans, Programs or Projects-Final Rule).

This project will not result in any meaningful changes in traffic volumes, vehicular mix, location of the existing facility, or any other factor that would cause an increase in emissions impacts relative to the No-Build Alternative. As such, this project will generate minimal air quality impacts for the Clean Air Act criteria pollutants and has not been linked with any special Mobile Source Air Toxics (MSAT) concern. Consequently, this project is exempt from an analysis for MSATs.

Moreover, the EPA regulations for vehicle engines and fuels will cause overall MSATs to decline significantly over the next 20 years. Even after accounting for a 64 percent increase in vehicle miles traveled (VMT), FHWA predicts MSATs will decline in the range of 57 percent to 87 percent, from 2000 to 2020, based on regulations now in effect, even with a projected 64 percent increase in VMT. This will both reduce the background level of MSATs as well as the possibility of even minor MSAT emissions from this project.

Projects which are exempt from project level conformity are also exempt from the PM2.5 project level conformity determination requirements, in accordance with 40 CFR 93.126.

Mr. Nelson J. Castellanos
MD 187 @ Oakmont Avenue/W. Cedar Lane
Page Five

Exempt projects are listed in 40 CFR 93.126 in Table 2 and the proposed project is an example of Safety—Projects that correct, improve or eliminate a hazardous location or feature projects in that table. This project will eliminate structural deficiencies and will not increase traffic capacity.

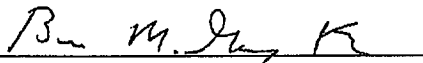
No ROW would be required from any publicly-owned public park, recreation area, wildlife or waterfowl refuge. The project is located within a Priority Funding Area, and is therefore consistent with Maryland's Smart Growth Legislation. The proposed project will not provide new access to any new or planned development areas. Therefore, indirect impacts are not anticipated as a result of this project. No disproportionately high or adverse effects on minority or low-income populations will occur as a result of this project. The project is consistent with the Montgomery County General Plan, Adopted 1993.

In summary, the proposed project will not involve any significant environmental impacts to socioeconomic, natural, or cultural resources. It will not induce significant foreseeable alterations in land use or affect planned growth. As such, we request your concurrence in classifying this project as a CE with a *de minimis* impact finding, and that the temporary use of a historic site is not subject to the requirements of Section 4(f). If you agree with this determination, please indicate your approval on the signature line. Additionally, your signature will constitute Location Approval for the proposed project.

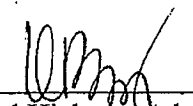
Sincerely,

Neil J. Pedersen
Administrator

by:


Gregory I. Slater, Director
Office of Planning and
Preliminary Engineering

CONCURRENCE:


Federal Highway Administration
for Division Administrator

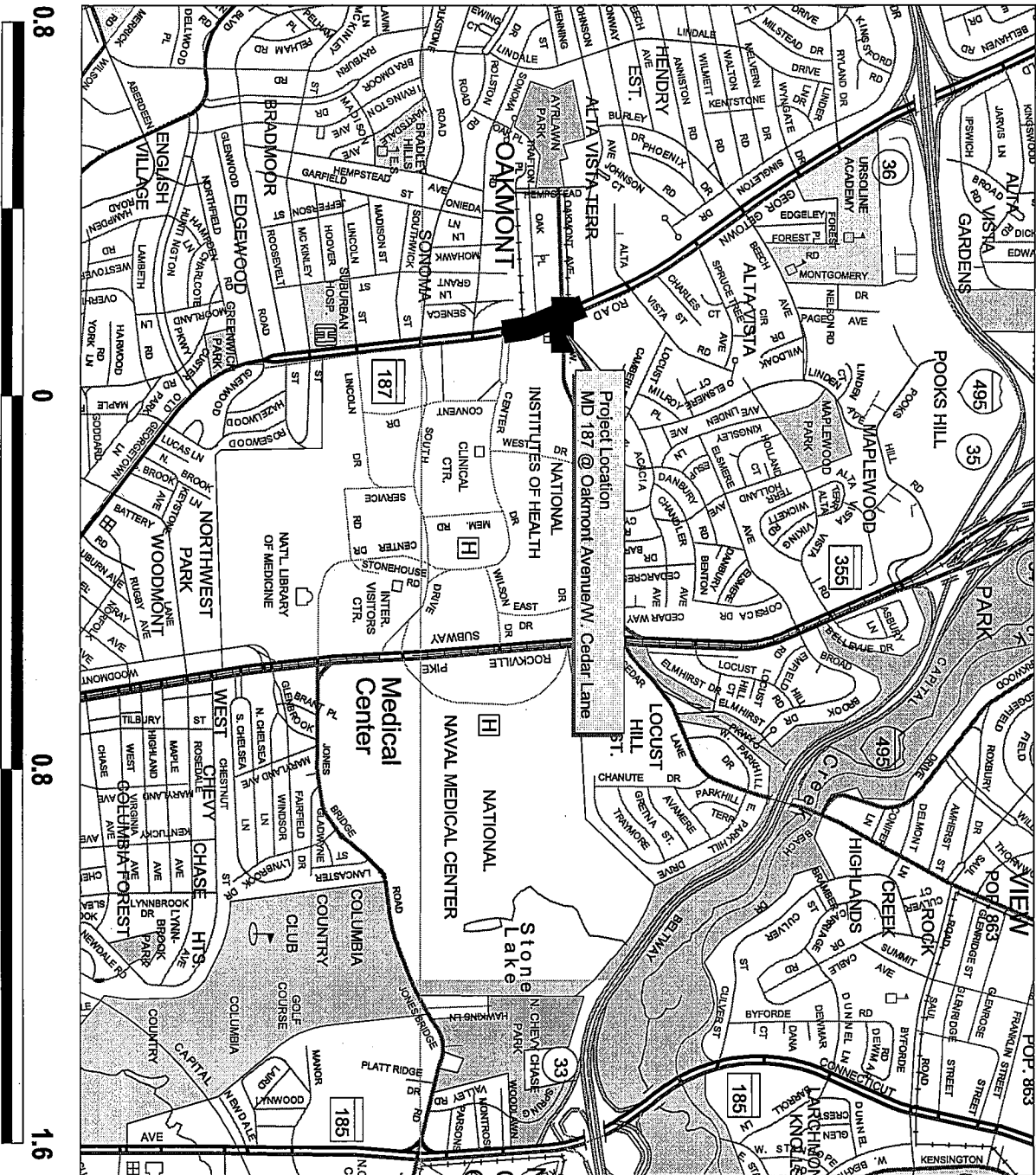
12/23/09
Date

cc: Mr. Gary Gray, Chief, Federal Aid Programming Section, SHA
Mr. Thomas G. Hinchliffe, Real Property Supervisor, Office of Real Estate, SHA
Ms. Christina Lavoie, Transportation Engineer, Highway Design Division, SHA
Mr. Bradley Smith, Environmental Manager, Environmental Planning Division, SHA

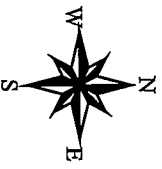
Project Location Map

MD 187 @ Oakmont Avenue/West Cedar Lane

Montgomery County



- USGS Topo Quad Index
- Roads
- CO
 - IS
 - MD
 - OP
 - SR
 - US
 - MU
 - GV
 - County



Kensington Quad

0.8 0 0.8 1.6 Miles



Base Realignment and Closure (BRAC) Intersection Improvement Projects Bethesda

PROJECT NEWSLETTER • MARCH 2009

Design Progresses on 4 BRAC-related Intersections

The Maryland State Highway Administration (SHA) has initiated design activities for the four intersections in the vicinity of the National Naval Medical Center (NNMC) most affected by the Base Realignment and Closure (BRAC). Below are the project background, schedule, and information on the upcoming Public Informational Workshop where concept plans for the four intersection projects will be presented to the community.

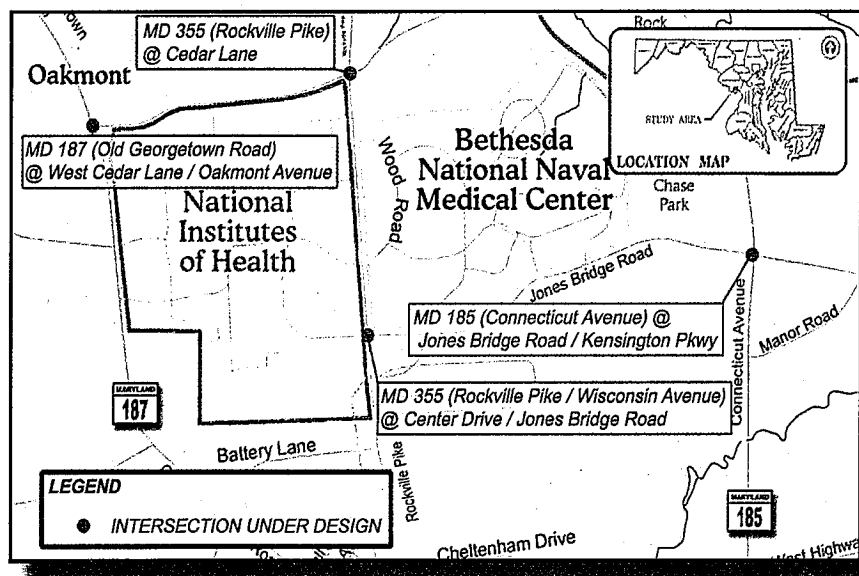
Attend the Public Meeting

SHA invites you to attend an Informational Workshop at which transportation improvements associated with four intersections near NNMC will be presented. This meeting format will allow attendees to review the concepts at their own pace and provide feedback. SHA staff and other agency representatives will be available to discuss the project issues, answer questions, and address any concerns you may have. No formal presentation will be given. Feel free to arrive at any time and walk through at your own convenience.

WHEN:	WHERE:
Thursday, April 2, 2009 5:30 PM to 7:30 PM	Bethesda - Chevy Chase High School - Gymnasium 4301 East - West Highway Bethesda, MD 20814

Project Background

Base Realignment and Closure, or "BRAC," is the congressionally authorized process used by the U.S. Department of Defense to reorganize and consolidate its military bases nationwide. In preparation for the 40,000 to 60,000 direct and indirect jobs coming to Maryland over the next six to ten years, SHA is designing short-term intersection improvements at four intersections in the Bethesda area (*see map*).



continued on back



Martin O'Malley, *Governor*
 Anthony G. Brown, *Lt. Governor*

Beverley K. Swaim-Staley, *Acting Secretary*
 Neil J. Pedersen, *Administrator*

MARYLAND DEPARTMENT OF TRANSPORTATION

June 18, 2009

Re: Project No. MO593A21
 BRAC Intersection: MD 187 at Oakmont
 Avenue/ West Cedar Lane
 Montgomery County, MD
 USGS Kensington 7.5' Quadrangle

Mr. J. Rodney Little
 State Historic Preservation Officer
 Maryland Historical Trust
 100 Community Place
 Crownsville MD 21032-2023

Dear Mr. Little:

Introduction and Project Description

This letter serves to inform the Maryland Historical Trust (MHT) of changes to the BRAC Intersection: MD 187 at Oakmont Avenue/West Cedar Lane, which was previously coordinated by letter to MHT dated December 4, 2008. The Maryland State Highway Administration's (SHA) finds that there will be no adverse effect to historic properties by the proposed project MO593A21.

This project is a single intersection breakout project from the BRAC intersection improvements that are planned for five intersections in this section of Montgomery County and that are in coordination with MHT. In the letter dated December 4, 2008, SHA presented the previous iteration of plans for this intersection, defined the APE for the project and identified six properties greater than forty five years of age within the APE, as well as the National Institute of Health, which has components of the campus that are eligible for listing in the National Register of Historic Places, but is not eligible in its entirety. The MHT concurred with submitted negative eligibility determinations for the six properties and agreed that there are no historically significant portions of the National Institute of Health in the APE on February 20, 2009. MHT did not agree that an additional property, the Walter P. Johnson House (M: 35-46), is outside the APE. The MHT requested that SHA prepare a DOE and Effect Assessment for the property.

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

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Mr. J. Rodney Little

BRAC Intersection: MD 187 at Oakmont Avenue/ West Cedar Lane

Page Two

Since that date, SHA has revised the original project scope. The same improvements are proposed, however the alignment has been shifted east affecting the Walter P. Johnson House at 9100 Old Georgetown Road in order to avoid impacts to the fire station. A total of 164 square feet of fee-simple right-of-way and 618 square feet of temporary construction easement will be required from 9100 Old Georgetown Road.

Revised project plans including right-of-way and easement requirements for MD 187 at Oakmont Avenue/ Cedar Lane are included as Attachment 1. Revised APE is included as Attachment 2.

Funding

Federal funds are anticipated for this project.

Area of Potential Effects

In determining the Area of Potential Effects (APE) for this project, SHA considered possible physical, visual, atmospheric, and audible impacts to historic properties. Though the proposed improvements are relatively minor in scope, the area is densely developed and many structures sit close to the roadway. Therefore, the APE for the historic standing structures has been defined to include the area of direct construction impacts as well as proposed right-of-way and easements, as indicated on the attached SHA quadrangle map for Bethesda. The APE for archaeology is defined as the limits of direct construction impacts.

Identification Methods and Results

Potentially significant architectural and archeological resources were both researched as part of the historic investigation instigated by the proposed intersection improvements at MD 187 at Oakmont Avenue/ West Cedar Lane.

Architecture: SHA Architectural Historian Jennifer Goold consulted the SHA-GIS Cultural Resources Database, the Maryland Inventory of Historic Properties (MIHP), the National Register of Historic Places (NRHP), and conducted research on the Internet and at the Enoch Pratt Free Library. A site visit was conducted on March 30, 2009.

The APE for this project is restricted to the area of direct construction impacts and the area occupied by required rights-of-way and easements. The APE contains seven properties with structure over forty-five years of age in addition to the NIH. Six of these properties and the NIH were coordinated with MHT by letter dated December 4, 2008. One Determination of Eligibility (DOE) is included for the additional property within the revised APE: the Walter P. Johnson House, at 9100 Old Bethesda Road (Attachment 3). SHA recommends that this property does meet Criterion B for listing in the NRHP.

Mr. J. Rodney Little

BRAC Intersection: MD 187 at Oakmont Avenue/ West Cedar Lane

Page Three

Project plans at the Walter P. Johnson House include acquiring a total of 164 square feet of fee-simple right-of-way and 618 square feet of temporary construction easement will be needed. A narrow triangular strip will be lost from the front of the property and the slope will be graded at the north end of the front yard. Taking this slender slice of the already minimal front yard will not affect the character defining features of the house, which is eligible for its association with Hall of Fame pitcher Walter Johnson. (See views Attachment 4.) This property lost its integrity of setting when it was subdivided after Johnson's period of residency and through previous widening of Old Georgetown Road. Thus, the proposed intersection improvement to MD 187 and Oakmont Avenue/ Cedar Lane will have no adverse effect on historic properties. Upon your agreement that this right-of-way acquisition will not adversely impact the historic property, SHA intends to propose *de minimis* impact finding to the Federal Highway Administration (FHWA) for Section 4(f) use of the Walter P. Johnson House (M: 31-46). The necessary grading at the Walter P. Johnson House will temporarily impact approximately 618 square feet/acres/square meters/hectares of the property. Given that these improvements would occur by temporary occupancy only, the requirements of Section 4(f) would not apply in this instance based on your agreement with the following criteria as the officials with jurisdiction.

-
- The duration of the impact will be temporary, i.e., less than the time needed for construction of the project;
 - There will be no change in the ownership of the land;
 - The scope of the work will be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) resource are minimal;
 - There are no anticipated permanent adverse physical impacts; and
 - The land being used will be fully restored, i.e., the resource will be returned to a condition which is at least as good as that which existed prior to the project.

Archeology: SHA Archeologist Lisa Kraus assessed the potential of the referenced project based on review of previous archeological studies (Comer 1997 and 2001), soil survey data, topographic and historic maps, aerial photographs, and site file data in the SHA-GIS Cultural Resources Database. A site visit was made on May 20, 2009. For archeology, the APE is defined as the limits of proposed construction, where ground disturbance would occur.

Soils are classified as Urban Land-Glenelg-Wheaton Association, and the MD187/West Cedar Lane intersection is mapped as Glenelg-Urban Land complex, with 8-15% slopes. Although terraces are present nearby, the intersection is situated in an area characterized by steep slopes, many of which have clearly been graded to accommodate the modern roadbed. Although the soil classification allows that some soils may be

Mr. J. Rodney Little

BRAC Intersection: MD 187 at Oakmont Avenue/ West Cedar Lane

Page Four

undisturbed, the MD 187 intersection with Cedar Lane/Oakmont Avenue has been impacted by earlier road and sidewalk construction, landscaping, utility installation, and commercial development. The May 20 site visit confirmed that the APE has been extensively disturbed.

The Griffith (1794) map shows no roads or structures in the APE, but Martenet & Bond's 1865 map of Montgomery County shows road alignments similar to modern MD 187, but no structures, within the APE. No archeological surveys have included the APE. A number of archeological sites have been recorded both west (18MO35, 18MO243, 18MO354, 18MO462 18MO463, 18MO464, 18MO465) and east of MD 355 (18MO555-MO557, 18MO664-MO648) on the National Institute of Health (NIH) property (Attachment 4). Many of the sites contain prehistoric components dating to the Late Archaic, Early Woodland, and Middle Woodland periods. E.A. Comer (1997; 2001) conducted Phase I and II investigations within the NIH property. Several concentrations of prehistoric, historic, and modern artifacts were identified, but the stratigraphy of each site was determined to be so disturbed that none of the sites was eligible for the National Register.

In light of the negative survey coverage in the immediate vicinity of the APE, the extent of prior disturbance in the APE, and the fact that the natural terrain would likely be unsuitable for significant prehistoric or historic use, it is unlikely that any archeological resources will be impacted and no further work is recommended.

Review Request

Please examine the attached maps, plans, photographs, DOE form, and Eligibility and Effects Table (Attachment 5). We request your concurrence by July 12, 2009 that there would be no adverse effects on historic properties by the intersection improvements at MD 187 at Oakmont Avenue/ West Cedar Lane. Based on your concurrence with our determination of no adverse effect and consideration of the views of any consulting parties participating in the Section 106 consultation, SHA intends to request that the FHWA make a de minimis impact finding for the minor Section 4(f) use of the Walter P. Johnson House. By carbon copy, we invite the Montgomery County Historic Preservation Commission to provide comments and participate in the Section 106 process. Pursuant to the requirements of the implementing regulations found at 36 CFR Part 800, SHA seeks their assistance in identifying historic preservation issues as they relate to this specific project (see 36 CFR §800.2(c)(3) and (5), and §800.3(f) for information regarding the identification and participation of consulting parties, and §800.4, and §800.5 regarding the identification of historic properties and assessment of effects). For additional information regarding the Section 106 regulations, see the

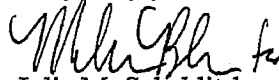
Mr. J. Rodney Little

BRAC Intersection: MD 187 at Oakmont Avenue/ West Cedar Lane

Page Five

Advisory Council on Historic Preservation's website, www.achp.gov, or contact the Maryland State Highway Administration or the Maryland Historical Trust. If no response is received by July 12, 2009, we will assume that this office decline to participate. Please call Jennifer Goold at 410-514-2899 (or via email at jgoold@sha.state.md.us) with questions regarding standing structures for this project. Lisa Kraus may be reached at 410-514-2884 (or via email at lkraus@sha.state.md.us) with concerns regarding archeology.

Very truly yours,



Julie M. Schablitsky

Assistant Division Chief

Environmental Planning Division

Attachments: 1) Project plans
2) Area of Potential Effects map
3) DOE form
4) Project views
5) Eligibility and Effects Table

cc: Mr. Bradley Smith, SHA- EPLD
Ms. Christina Lavoie, SHA-EPLD
Ms. Lisa Kraus, SHA-EPLD
Ms. Jennifer Goold, SHA-EPLD
Dr. Julie M. Schablitsky, SHA-EPLD
Mr. Scott Whipple, Montgomery County Historic Preservation Commission
(w/Attachments)
Ms. Margaret N. Alexander (w/Attachments)

**Concurrence with the MD State Highway Administration's
Determination(s) of Eligibility and/or Effects**

Project Number: MO593A21 MHT Log No. 200902445
Project Name: BRAC Intersections: MD 187 @ Oakmont Ave./ Cedar Lane
County: Montgomery
Letter Date: June 18, 2009

The Maryland Historical Trust has reviewed the documentation attached to the referenced letter and concurs with the MD State Highway Administration's determinations as follows:

Eligibility (as noted in the Eligibility Table [Attachment 5]):

☒ Concur
☐ Do Not Concur

Effect (as noted in the Effects Table [Attachment 5]):

☐ No Properties Affected
☒ No Adverse Effect
☐ Conditioned upon the following action(s) (see comments below)
☐ Adverse Effect

Agreement with FHWA's Section 4(f) criteria of temporary use (as detailed in the referenced letter, if applicable):

☒ Agree

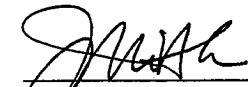
Agreement with FHWA's de minimis impact finding (as detailed in the referenced letter, if applicable):

☒ Agree

Comments:

WE CONCUR WITH SHA THAT THE WALTER P. JOHNSON HOUSE
(MIHP No. M: 35-46) IS ELIGIBLE FOR LISTING IN THE
NATIONAL REGISTER OF HISTORIC PLACES.

By:


MD State Historic Preservation Office/
Maryland Historical Trust

8-12-09
Date

Return by U.S. Mail or Facsimile to:
Dr. Julie M. Schablitsky, Assistant Division Chief, Environmental Planning Division,
MD State Highway Administration, P.O. Box 717, Baltimore, MD 21203-0717
Telephone: 410-545-8870 and Facsimile: 410-209-5046



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor
John R. Griffin, Secretary
Eric Schwaab, Deputy Secretary

January 13, 2009

Mr. Bruce M. Grey
Maryland Department of Transportation
State Highway Administration
707 North Calvert Street
Baltimore, MD 21202

RE: Environmental Review for Project No. MO593A21, Bethesda BRAC Intersections Improvements, Montgomery County, Maryland.

Dear Mr. Grey:

For the intersections of MD 355 at West Cedar Lane, MD 355 at Jones Bridge Road, MD 187 at West Cedar Lane and MD 185 at Jones Bridge Road, the Wildlife and Heritage Service has determined that there are no State or Federal records for rare, threatened or endangered species within the boundaries of the project site as delineated. As a result, we have no specific comments or requirements pertaining to protection measures at this time. This statement should not be interpreted however as meaning that rare, threatened or endangered species are not in fact present. If appropriate habitat is available, certain species could be present without documentation because adequate surveys have not been conducted.

Thank you for allowing us the opportunity to review this project. If you should have any further questions regarding this information, please contact me at (410) 260-8573.

Sincerely,

Lori A. Byrne,
Environmental Review Coordinator
Wildlife and Heritage Service
MD Dept. of Natural Resources

ER# 2008.2492.mo
Cc: G. Golden, DNR



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Chesapeake Bay Field Office
177 Admiral Cochrane Drive
Annapolis, MD 21401
410/573-4575



Attachment 5

January 7, 2009

State Highway Administration
Maryland Department of Transportation
707 North Calvert Street
Baltimore, MD 21202

2009012 PM 1:09:12

RE: Project No. MO593A21 Bethesda BRAC Intersections Improvements Montgomery County

Dear: Bruce M. Grey

This responds to your letter, received December 10, 2008, requesting information on the presence of species which are federally listed or proposed for listing as endangered or threatened within the vicinity of the above reference project area. We have reviewed the information you enclosed and are providing comments in accordance with section 7 of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*).

Except for occasional transient individuals, no federally proposed or listed endangered or threatened species are known to exist within the project impact area. Therefore, no Biological Assessment or further section 7 Consultation with the U.S. Fish and Wildlife Service is required. Should project plans change, or if additional information on the distribution of listed or proposed species becomes available, this determination may be reconsidered.

This response relates only to federally protected threatened or endangered species under our jurisdiction. For information on the presence of other rare species, you should contact Lori Byrne of the Maryland Wildlife and Heritage Division at (410) 260-8573.

Effective August 8, 2007, under the authority of the Endangered Species Act of 1973, as amended, the U.S. Fish and Wildlife Service (Service) removed (delist) the bald eagle in the lower 48 States of the United States from the Federal List of Endangered and Threatened Wildlife. However, the bald eagle will still be protected by the Bald and Golden Eagle Protection Act, Lacey Act and the Migratory Bird Treaty Act. As a result, starting on August 8, 2007, if your project may cause "disturbance" to the bald eagle, please consult the "National Bald Eagle Management Guidelines" dated May 2007.

If any planned or ongoing activities cannot be conducted in compliance with the National Bald Eagle Management Guidelines (Eagle Management Guidelines), please contact the Chesapeake Bay Ecological Services Field Office at 410-573-4573 for technical assistance. The Eagle Management Guidelines can be found at:

<http://www.fws.gov/migratorybirds/issues/BaldEagle/NationalBaldEagleManagementGuidelines.pdf>.

In the future, if your project can not avoid disturbance to the bald eagle by complying with the Eagle Management Guidelines, you will be able to apply for a permit that authorizes the take of bald and golden eagles under the Bald and Golden Eagle Protection Act, generally where the take to be authorized is associated with otherwise lawful activities. This proposed permit process will not be available until the Service issues a final rule for the issuance of these take permits under the Bald and Golden Eagle Protection Act.

An additional concern of the Service is wetlands protection. Federal and state partners of the Chesapeake Bay Program have adopted an interim goal of no overall net loss of the Basin's remaining wetlands, and the long term goal of increasing the quality and quantity of the Basin's wetlands resource base. Because of this policy and the functions and values wetlands perform, the Service recommends avoiding wetland impacts. All wetlands within the project area should be identified, and if construction in wetlands is proposed, the U.S. Army Corps of Engineers, Baltimore District, should be contacted for permit requirements. They can be reached at (410) 962-3670.

We appreciate the opportunity to provide information relative to fish and wildlife issues, and thank you for your interests in these resources. If you have any questions or need further assistance, please contact Devin Ray at (410) 573-4531.

Sincerely,

A handwritten signature in black ink, appearing to read "Leopoldo Miranda Castro".

Leopoldo Miranda Castro
Field Supervisor